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NO.

In the Supreme Court of the United States

OCTOBER TERM 1996

IN RE: JOE CONTE TOYOTA, INC.,
Debtor

JOSEPH P. CONTE, JR.,
Petitioner

versus

JOE CONTE TOYOTA, INC.
Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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86 pp

QUESTIONS PRESENTED FOR REVIEW

1) What is the appropriate standard for application of the "bankruptcy mootness rule" to appeals of bankruptcy court rulings?

2) May portions of a Liquidating Plan of Reorganization be reviewed and modified or amended without disrupting the entire Plan?

3) In the event that a bankruptcy appeal presents issues regarding the appellant's future rights, obligations, and interests, shouldn't the appellant be afforded an appeal with respect to those issues, even if other relief sought may no longer be possible?

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JURISDICTIONAL STATEMENT

This Court has jurisdiction to hear this matter on Petitioner's Application for Writs of Certiorari from the decision of the U.S. Fifth Circuit Court of Appeals, dated December 13, 1996, pursuant to 28 U.S.C. §1254 (1).

STATEMENT OF THE CASE

Joseph P. Conte Toyota, Inc., Debtor, operated as a Toyota automobile dealership in New Orleans, Louisiana. The corporation was begun by Joseph P. Conte, Sr. He was joined in the management of the corporation by his son Joseph P. Conte, Jr., Petitioner herein. Following the death of Mr. Conte, Sr. in 1993, Petitioner succeeded him as President and sole director of the corporation.

In 1993, Debtor had become embroiled in litigation with Toyota Motor Sales U.S.A., Inc., the importer/manufacturer of the cars sold by Debtor, (hereinafter referred to as ("TMS"), Gulf States Toyota, the distributor of the cars (hereinafter referred to as ("GST"), and Toyota Motor Credit Corportion, the financier of Debtor's floor plan, (hereinafter referred to as "TMCC"). This litigation resulted from a pattern of practices by "TMS", "GST", and "TMCC" which breached federal and state laws enacted specifically for the protection of automobile dealers, unfair trade practice laws, the anti-trust laws, and the various agreements between Joe Conte Toyota, Inc., "TMS", "GST", and "TMCC", including the dealership Agreement, the financing agreement, and the Settlement and Compromise Agreement executed as a result of earlier litigation between the parties; all of which conduct resulted in the disruption and diminution of debtor's business.

As the litigation against "TMS", "TMCC" and "GST" continued, Debtor's cash flow shortage became critical, and Petitioner Joseph P. Conte, Jr. negotiated and secured an "Agreement to Sell and Purchase Assets" from Troy Duhon, who agreed to purchase all of the major assets of the corporation, excluding the claims against the Toyota entities. In the

summer of 1995, Joseph P. Conte, Jr. retained Evan Park Howell, III, Esq. as bankruptcy counsel on behalf of Debtor and instituted these voluntary reorganization proceedings under Chapter 11 in order to secure the time necessary to close the sale on the assets of the corporation and marshal its remaining resources for prosecution of its claims against the Toyota entities.

Shortly after institution of these bankruptcy proceedings, the Toyota litigation was removed from a Louisiana court and transferred to the U.S. Bankruptcy Court for the Eastern District of Louisiana as an adversary proceeding, and Debtor's independent litigation counsel withdrew from its representation of Petitioner and Debtor in the Toyota litigation.

A "Liquidating Plan of Reorganization" was filed herein on July 10, 1995. A "First Amended Disclosure Statement" was filed on August 25, 1995. Each of these documents contemplated payment of administrative and priority claims, secured claims and the "known" unsecured claims[1] from Debtor's liquid assets and from the proceeds of the Duhon sale negotiated by Petitioner. The only classes of creditors deemed impaired under the Plan were Classes 5 ("Insider Claims") and 6 ("Equity Holders). Under both the Plan and the First Amended Disclosure Statement, creditors in Classes 5 and 6 (including Petitioner, his mother, and the family trust) were to receive any excess funds **and the right to pursue the Toyota litigation.**

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[1] "There also existed a number of "unknown" unsecured, non-priority claims. The bulk of these claims appear to be associated with the counterclaims filed in the Toyota litigation by the Toyota entities for penalties and attorneys fees.

Sometime during July or August of 1995, the Toyota entities began to make settlement overtures to debtor's bankruptcy attorneys, Mr. Howell and his associate Ms. Elizabeth W. Magner, Esq.

On August 17, 1995, on the basis of advice by counsel to the effect that pursuant to bankruptcy rules and regulations, it would be necessary to appoint his mother, Doris L. Conte, and his sister, Susan C. Conte, to the corportion's board of directors if the corporation was to continue to provide health insurance to them under the corporate health insurance plan, Mr. Conte executed a corporate resolution to that effect.

Following the denial of Debtor's Motion to Stay the Toyota litigation by the U.S. Bankruptcy Court, Mr. Howell and Ms. Magner advised Mr. Conte that they intended to settle the litigation over his objection. Acting as President, Chairman and General Manager, as well as majority shareholder, Mr. Conte discharged Mr. Howell and Ms. Magner as counsel for Joe Conte Toyota, and, in addition, discharged his mother and his sister from the Board of Directors. He reiterated these discharges on September 8 and 11, 1995.

Notwithstanding these actions, on September 12, 1995, at a "Meeting of the Board of Directors" of Joe Conte Toyota which was noticed by Ms. Magner, Mrs. Conte and Ms. Conte voted to settle the Toyota litigation. This action was not authorized by Petitioner Joseph P. Conte, Jr. To the contrary, he reiterated his discharge of the bankruptcy attorneys and the two directors on September 13, 1995.

On September 15, 1995, Mr. Howell and Ms. Magner

filed in these proceedings a "Motion for Authority to Compromise" (the Toyota litigation) on behalf of Joe Conte Toyota, Inc. This motion was set for hearing on October 5, 1995. Mr. Conte sought representation, but was unable to secure new counsel prior to October 5, 1995.[2] He appeared *pro se* upon that date and sought to secure a continuance of the hearing date. Notwithstanding Petitioner's Motion to Continue, Mr. Conte's lack of representation, and his assertions of authority as President, Chairman and General Manager, as well as majority shareholder, to discharge Mrs. Conte and Ms. Conte as directors of the corporation, and Mr. Howell and Ms. Magner as counsel for the corporation, the court proceeded with the hearing.[3]

At the hearing on the "Motion to Compromise", Mr. Conte introduced evidence of his discharge of the proponents of the Motion, and attempted to introduce evidence as to his majority interest in the corporation. Upon the objection as to authenticity offered by Ms. Magner, the court refused to admit into evidence two (2) Acts of Donation by Joseph P. Conte, Sr. and Doris L. Conte to Joseph P. Conte, Jr., representing transfer of 65% of the shares of Joseph P. Conte Toyota, Inc.

Immediately following the hearing on the "Motion to

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[2] In fact, Mr. conte conducted discussions with a prominent local bankruptcy attorney, but learned only days before the hearing that said counsel had declined to undertake his representation.

[3] In doing so, the court also ignored the reality that if Mr. Conte's assertions were correct, petitioner had the right to withdraw the "Motion to Compromise". No party other than Joe Conte Toyota, Inc. had joined in the Motion. Under these circumstances, it is unclear what jurisdiction the bankruptcy court would have had to proceed with the hearing.

Compromise", the court ruled on the motion from the bench and on the record:

> "Weighing all of these (factors), I'm convinced that the proposed settlement is in the best interest of the debtor estate. I'm therefore going to approve it. Specifically, I've weighed all this evidence. I'm convinced that the probabilities of success are not particularly good in the litigation. There's a great deal of difficulty to be encountered in the litigation, have to be substantial expense, probably in excess of $250,000 to bring the case to trial. The litigation is extremely complex. It involves some complicated questions of state law, and there's a great deal of expense, inconvenience and delay to be encountered in attending it.
>
> Finally, and perhaps most importantly, the paramount interest of the creditors obviously weighs in favor of this settlement because the settlement will allow the creditors to be paid in full.
>
> For all of the foregoing reasons, I approve the compromise of the claim with Toyota Motor Sales and Gulf States Toyota and the other named defendants in the state court suit, which is now, I believe, removed to federal court."

Transcript, October 5, 1995 at p. 207.

On November 2, 1995, the bankruptcy judge signed an "Order on Compromisse", together with "Reasons for Order Approving Compromise" apparently prepared and submitted

by attorneys Evan Park Howell and/or Elizabeth Magner.[4] These documents are reprinted at Appendix E and F. Included in the Reasons, were findings of fact respecting the ownership of the corporation (Joseph P. Conte, Jr./25%; The Joseph P. Conte Family Trust/37.5%; and Doris L. Conte/37.5%), the composition of the Board of Directors (Joseph P. Conte, Jr., Doris L. Conte, and Susan C. Conte) and that the approval of the said board was granted at a "duly noticed meeting". None of these facts had been addressed by the judge in his oral reasons given on the date of the hearing.

On November 8, 1995, the Liquidating Plan of Reorganization was approved without amendment. On November 15, 1995, the "Duhon" sale was closed. "Acts of Credit Sale with Reservation of Vendor's Privilege and of Settlement" were apparently signed by Joe Conte Toyota, Inc., Duhon and the Toyota defendants. The litigation between Joseph P. Conte Toyota, Inc. and the Toyota defendants was subsequently dismissed.

On December 8, 1995, petitoner filed *pro se* a "Motion and Order for Leave to Appeal" on behalf of the corporation, himself, and two other Conte family entities. Appendix #4. While Mr. Conte was permitted leave to appeal on his own behalf, as a non-attorney, he was not allowed to act on behalf of the other named persons. Mr. Conte did not seek a stay of these proceedings pending appeal, simply because he was unaware that such a course of action was available to him.

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[4] The submission of the "Order of Compromise" is actually signed by Craig M. Cousins, who would appear to be an associate of Mr. Howell and/or Ms. Magner.

On Motion of Joe Conte Toyota, Inc., represented by Ms. Magner, the U.S. District Court dismissed Mr. Conte's appeal on April 16, 1996 as moot.[5] Appendix B. Mr. Conte filed a timely notice of appeal to the U.S. Fifth Circuit Court of Appeals on May 13, 1996 on the basis of its general supervisory jurisdiction under 28 U.S.C. § 1291. The Fifth Circuit Court of Appeals affirmed the dismissal by the district court on December 13, 1996.

ARGUMENT

A. The method of applying the "bankruptcy mootness rule" in the Fifth Circuit conflicts with the method of application found in other Circuits.

In these proceedings, the U.S. Fifth Circuit Court of Appeals dismissed Petitioner's appeal of the Bankruptcy Court's order approving settlement of the Toyota litigation on the basis of the Fifth Circuit's standard for application of the "bankruptcy mootness rule"[6] as sset forth in *In Re Manges,* 29 F.3d 1034 (5th Cir. 1994). The factors for determining the "mootness" of an appeal in the setting of bankruptcy proceedings was outlined in *Manges* as follows:

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[5] Mr. Conte was able to secure counsel to represent him, and on April 3, 1996, undersigned counsel enrolled s counsel of record in the proceedings before the U.S. district court.

[6] Inasmuch as Petitioner does not seek to set aside the sale of corporate assets to Duhon, 11 U.S.C. § 363(m), regarding the reversal or modification of authorization to sell property of the bankrupt estate, does not govern this determination. Nor does 11 U.S.C. § 1127 (b) apply, regarding amendment or modification of a plan, since Mr. Conte had no objection to the Plan, which did not evision settlement of the Toyota litigation.

> "This court has historically examined three factors in making this asessment; (i) whether a stay has been obtained; (ii) whether the plan has been 'substantialy consummated,' and (iii) whether the relief rquested would affect either the rights of parties not before the court or the success of the plan." (Citations omitted.)

29 F.3d at p. 1039.

By contrast, the Eleventh Circuit has outlined its approach to assessing the mootness of a bankruptcy appeal in *First Union Real Estate Equity and Mort. Inv. v. Club Assoc.*, 956 F.2d 1065.

> "Central to a finding of mootness is a determination by an appellate court that it cannot grant effective judicial relief. Put another way, the court must determine whether the 'reorganization plan has been so substantially consummated that effective relief is no longer available. . . (Citations omitted.) As the district court properly noted, substantial consummation by itself does not resolve the issue. Even if substantial consummation has occurred, a court must still consider all the circumstances of the case to decide whether it can grqnt effective relief."

956 at F.2d 1065. As a footnote to this discussion, the Eleventh Circuit made note of a number of the circumstances which must be so considered:

> "n.11 The mootness inquiry necessarily involves many subsidiary questions: Has a stay pending appeal been obtained? **If not, then why not?** Has the plan been substantially consummated? If so, what kind of transactions have been consummated? What type of relief does the appellant seek on appeal? What effect would granting such relief have on the interests of third parties not before the Court? **And would relief affect the re-emergence of the debtor as a revitalized entity?** The answers to these questions provide the reviewing court with the backdrop to evaluate the ultimate issue of whether a confirmation plan has progressed to the point where effective judicial relief is no longer a viable option."

Ibid. Had these proceedings been conducted in the 11th Circuit, the court would have considered more than the simple fact that no stay had been obtained. The fact that Mr. Conte was unrepresented by counsel would would also have been considered. The court would also have taken into account the fact that Mr. Conte was unrepresented not because of any lack of diligence upon his part, but because the counsel he himself had obtained to represent his corportion in these proceedings, and in whom he had resposed his trust, had suddenly determined to pursue a course of action adverse to his interests and against his explicit instructions. In the Eleventh Circuit, a court would also have considered that the prosecution and successful resolution oif the Toyota litigation was the one hope of reemergence of the corporation as a vital entity; in fact, both the Plan and the First Amended Disclosure Statement envisioned payments of all classes of creditors other than Insiders and Equity Holders without the necessity

of settlement of the Toyota litigation. The prosecution of the Toyota litigation and its successful resolution was the vehicle by which the corporation was to emerge from these reorganizatiion proceedings a solvent and viable entity.[7]

In the Fifth Circuit, the failure to apply for a stay, or the denial of an appellant's application for stay, effectively denies an appellant his right of appeal. At the very least, in the Eleventh Circuit, an appellant is entitled to consideration of the circumstances underlying his failure to obtain a stay, as well as other issues which may bear upon the equity of denying him a right to review of the bankruptcy court's decisions.

This Court has never addressed the proper standard for assessment of the "mootness" of bankruptcy appeals. The Circuit Courts of Appeals are in need of guidance in the proper standard to apply to balance the competing interests involved.

B. The position of the Fifth Circuit that portions of a confirmed plan may not be modified or amended on appeal is in conflict with the position of other circuits.

Petitioner seeks only a review of the bankruptcy court's order approving the compromise of theToyota litigation. Petitioner does not seek to upset the Duhon sale. It was in fact

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[7] It is important to note that, notwithstanding statements made by attorneys Howell and Magner in the proceedings below regarding the unlikelihood of success of the Toyota litigation, Mr. Conte and his corporation had successfully settled litigation with Toyota in the past and had a good chance of doing so again.

the petitioner who negotiated the sale, and he did so prior to the institution of the reorganization proceedings. The court of appeals refused to entertain the possibility of separating the Duhon sale from the Toyota settlement and permitting Petitioner Conte to proceed with his appeal of the compromise approval. In doing so, the panel was acting in accordance with the opinion of the Fifth Circuit in *In Re Mages, supra.*

> "n. 13 At oral argument, the Manges debtors' counsel argued for the first time that we might simply strike the offensive portion of the Plan without completely unravelling it. See *Bill Roderick Distrib., Inc. v. A.J. Mackay Co. (In Re A.J. Mackay Co.),* 50 B.R. 756, 759-60 (D. Utah 1985) (holding tht a bankruptcy court may modify a Chapter 11 plan after confirmation by deleting provisions that it did not have the jurisdiction to confirm). We disagree."

29 F.3d at 1043. In *Bill Roderick,* the Utah district court relied upon Second Circuit cases *In re Texlon Corp.,* 596 F.2d 1092, 1101 (2d Cir. 1979) and *In re Pottasch Bros. Co.,* 79 F.2d 613, 616 (2d Cir. 1935), both cases standing for the proposition that it is both appropriate and desirable to allow for the modification and/or amendment of reorganization plans.

The district court in *Bill Roderick* found it particularly compelling that the jurisdiction of the bankruptcy court to enter certain portions of the plan was in question. Similarly, in the Joe Conte Toyota bankruptcy proceedings, it is unclear what jurisdiction the U.S. Bankruptcy Court would have to conduct a hearing on Joe Conte Toyota Inc.'s Motion to Approve Compromise and to rule upon said motion, in the face of its withdrawal by Joseph P. Conte, Jr., its President,

Chairman and General Manager, as well as sole director and majority shareholder.

Petitioner Joseph P. Conte, Jr. should be entitled to review of the approval of the Toyota compromise. There is no need to upset any other part of the Plan. Petitioner has never sought to revoke the Duhon sale, the centerpiece of the plan of reorganization. Nor has he sought to rescind payments made under the Plan as approved on November 8, 1995. The principles of bankruptcy appeals as applied in the Second Circuit would have afforded Mr. Conte such a review.

C. Petitioner was, in any event, entitled to review of the bankruptcy court's findings regarding the amount of his equity interest in Joe Conte Toyota, Inc., even if no other relief requested ws available to him.

In part II of the "Motion and Order for Leave to Appeal" (reprinted at Appendix D) filed in these proceedings by Petitioner, Joseph P. Conte, Jr., Petitioner assigned as error the finding by the bankruptcy court regarding percentage of equity or ownership interests in Joe Conte Toyota, Inc. Petitioner further assigned as error the refusal of the bankruptcy court to permit introduction into evidence of documents produced by him demonstrating his majority interest in the shares of the corporation. Petitioner further specifically sought "reversal and remand by the United States District Court for the Eastern District of Louisiana on each and every aforementioned issue." Appendix D at p. 15.

The review of this Finding of Fact was so critical to Petitioner that he instituted an adversary proceding in these bankruptcy proceedings seeking declaratory judgment regarding the equity interests in Debtor Joe Conte Toyota, Inc. while this appeal was still pending before the court of appeals. This proceeding was dismissed on the grounds of *res judicata*. By letter of Setember 16, 1995, Petitioner advised the court of appeals of this development.

Nonetheless, when the Fifth Circuit affirmed the dismissal of Petitioner's appeal, it did so without remanding the issue of the percentage of Mr. Conte's ownership of the corporation to the district court for further preceedings on appeal.

Although this Court has never addressed the "bankruptcy mootness" standard, this Court has found in the context of general Article III "cases and controversies" mootness that a case can remain alive and viable, notwithstanding that certain issue(s), perhaps even the main issue, haave become moot, if there remain other issue(s) which are not moot. In *University of Texas v. Camenisch,* 451 U.S. 390 (1981), this Court opined as follows:

> "By the time the Court of Appeals had acted, the University had obeyed the injunction by paying for Camenisch's interpreter, and Camenisch had been graduated. The Court of Appeals, however, rejected a suggestion that the case was therefore moot. . .
>
> The Court of Appeals correctly held that the case as a whole is not moot since, as that court noted, it remains to be decided who should

ultimately bear the cost of the interpreter. . .

> This then was simply another instance in which one issue in a case has become moot, but the case as a whole remains alive because other issues have not become moot. See e.g. *Powell v. McCormack,* 395 U.S. 486."

451 U.S. at pp. 393 - 394.

The failure of the U.S. Fifth Circuit Court of Appeals to afford to Petitioner an appeal even on the issue of his percentage of ownership of the shares of stock in Joe Conte Toyota, Inc. is in direct conflict with the decision of this Court in *University of Texas v. Camenisch.* Further, this denial of Petitioner's right to appeal even those issues which have no effect upon the Plan or even upon the manner in which the Plan has been carried out to date, but relate solely to the future rights, obligations and interests of the Petitioner, is so far departed from the accepted and usual course of judicial proceedings as to cry out for the exercise of this Court's supervisory jurisdiction.

CONCLUSION

For all of the foregoing reasons, Petitioner Joseph P. Conte, Jr. prays that this Court grant his application for writs of certiorari; that the Clerk of the U.S. Fifth Circuit Court of Appeals be requested to certify and transmit the record in No. 96-30555, "Joseph P. Conte, Jr. v. Joe Conte Toyota, Inc. (In the Matter of: Joe Conte Toyota, Inc.)", that a briefing schedule be set, and that after all due proceedings are had herein, the judgment of the U.S. Fifth Circuit Court of

Appeals be reversed and this matter remanded to the U.S. District Court for the Eastern District of Louisiana for further proceedings on Petitioner's appeal of the U.S. Bankruptcy Court's Order Approving Compromise.

In the alternative, Petitioner prays that this Court will grant Petitioner's application and, by summary disposition, order this matter remended to U.S. District Court for the Eastern District of Louisiana for further proceedings on Petitioner's appeal of the Findings of Fact contained in the U.S. Bankruptcy Court's Reasons for Order Approving Compromise respecting his percentage of equity interest in the Debtor corporation.

Respectfully submitted,

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 96-30555
Summary Calendar

FILED
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In the Matter of: JOE CONTE TOYOTA INC
Debtor

JOSEPH P CONTE, JR
Appellant

v.

JOE CONTE TOYOTA INC
Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
(95-CV-4212-J)

Before KING, DAVIS, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Joseph Conte, Jr. ("Conte") appeals a judgment by the

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

district court dismissing his appeal of a compromise order in the bankruptcy court as moot. Finding no error, we affirm.

I. BACKGROUND

Joe Conte Toyota, Inc. ("Conte Toyota" or the "debtor") filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code on June 7, 1995. At the time it filed for bankruptcy protection, the debtor was in the process of negotiating the sale of its business goodwill and certain specified assets to a third party purchaser, Troy Duhon ("Duhon"). Prior to filing, the debtor had engaged in lengthy litigation with Gulf States Toyota, Inc., Toyota Motor Credit Corp., and Toyota Motor Sales, Inc. (the "Toyota entities"). The debtor alleged that the Toyota entities violated state and federal law and the terms of various agreements. The Toyota entities counterclaimed and filed claims on the estate.

The debtor's board of directors authorized its attorneys to reach a compromise of the litigation with the Toyota entities. On October 5, 1995, the bankruptcy court held a hearing on a motion to approve the compromise. Conte appeared *pro se* to object to the compromise of the debtor's claim against the Toyota entities, contending that the compromise was not in the best interest of the debtor and that the board and the attorneys had no authority to act. The bankruptcy court, however, approved the compromise on November 2, 1995. The compromise contains the following conditions, among others: that the Toyota entities will approve Duhon as the successor dealer and operator of the franchise and give him a Dealer Sales and Service Agreement, that Duhon will increase his purchase offer by $110,000, that the Toyota entities will pay the debtor $100,000 and release all claims against it, and

that the debtor will release all claims against the Toyota entities.

On November 8, 1995, the debtor obtained an order of confirmation on its reorganization plan. The plan incorporated the terms of the compromise, specifically the sale of certain assets of the debtor to Duhon, the transfer to Duhon of all its rights under the Dealer Sales and Services Agreement, and the issuance of a new Dealer Sales and Services Agreement to Duhon by the Toyota entities. No objection was filed to the confirmation of the plan, and no stay was requested.

On November 13, 1995, Conte filed a notice of appeal of the compromise order in federal district court. On November 15, the debtor, the Toyota entities, and Duhon executed the acts necessary to effectuate the terms of the compromise and plan. On April 16, 1996, the district court granted Conte Toyota's motion to dismiss on the ground of mootness. Conte filed a timely notice of appeal.

II. DISCUSSION

We review the granting of a motion to dismiss de novo, accepting as true all well-pleaded assertions in the light most favorable to the plaintiff. *House the Homeless, Inc. v. Widnall,* 94 F. 3d 176 (5th Cir. 1996).

The debtor argues that Conte's appeal of the compromise order is moot because the relief requested cannot be granted. In the bankruptcy context, a court may decline to address the merits of a claim "when there has been substantial consummation of the plan such that effective

judicial relief is no longer available — even though there may still be a viable dispute between the parties on appeal." "*In re Manges,* 29 F.3d 1034, 1039 (5th Cir. 1994). This court considers three factors to determine whether a controversy in this context is moot: "(i) whether a stay has been obtained, (II) whether the plan has been substantially consummated, and (iii) whether the relief requested would affect either the rights of parties not before the court or the success of the plan." *Id.*

Applying the three factors to the present case, we find that the district court correctly dismissed the appeal as moot. First, Conte never obtained a stay of implementation of the reorganization plan pending the appeal of the compromise order. Second, because of Conte's failure to obtain a stay, the plan has now been substantially consummated. "Substantial consummation" is a statutory measure for determining whether a reorganization plan may be amended or modified by the bankruptcy court. 11 U.S.C. § 1127 (b). "Substantial consummation" is defined as:

> (A) transfer of all or substantially all of the property proposed by the plan to be transferred;
> (B) assumption by the debtor of or by the successor to the debtor under the plan of the business or of the management of all or substantially all of the property dealt with by the plan; and
> (C) Commencement of distribution under the plan.

Id. § 1101 (2). In this case, the sale of the dealership's equipment and Conte Toyota's franchise rights to Duhon and the distribution of the settlement and sale proceeds to allowed claimants resulted in substantial consummation of the plan.

These actions transferred substantially all of the property to be transferred by the plan and commenced distribution under the plan. Third, because the plan has been substantially consummated, the relief requested by Conte would affect the rights of parties not before the court and would destroy the success of the plan. By settling the ongoing litigation and securing the Toyota entities' approval of the Duhon sale, the compromise facilitated the sale and made it possible for the debtor to pay the allowed claimants according to the terms of the plan. Neither Duhon nor the allowed claimants are before the court; and the plan could not have been implemented successfully without the prior compromise. Thus, Conte's appeal of the compromise order was correctly dismissed as moot.

III. CONCLUSION

For the foregoing reasons, the judgment of the district court is AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN THE MATTER OF
JOE CONTE TOYOTA, INC.

CIVIL ACTION

NO. 95-4212

SECTION "J"

FILED
APR 17 '96

JUDGMENT

The Court having separately granted the motion of appellee to dismiss this matter, for reasons separately assigned,

IT IS ORDERED, ADJUDGED, AND DECREED that there be judgment herein in favor of appellee, Joe Conte Toyota, Inc., and against appellant, Joe Conte, Jr., dismissing this appeal as moot.

New Orleans, Louisiana, this 16 day of April, 1996.

/s/ Patrick E. Carr
UNITED STATES DISTRICT JUDGE

DATE OF ENTRY APR 18 1996

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN THE MATTER OF
JOE CONTE TOYOTA, INC.

CIVIL ACTION

NO. 95-4212

SECTION "J"

FILED
APR 17 '96

ORDER AND REASONS

Before the Court is the motion of appellee, debtor Joe Conte Toyota, Inc. ["debtor"], to dismiss this bankruptcy appeal because it is moot. The issues have been determined without oral argument.

This appeal is a challange to the bankruptcy court's approval of the compromise of an adversary action. In that action, debtor alleged that individuals and companies associated with Toyota Motor Sales, U.S.A., Inc. [collectively "Toyota"] violated state and federal laws and the terms of agreements. Toyota counterclaimed in the action and also filed claims on the estate.

Debtor's Board of Directors authorized the attorneys for debtor to compromise the adversary action. At a bankruptcy court hearing on a motion to approve the compromise,

DATE OF ENTRY APRIL 18 1996

appellant Joe Conte, Jr. ["Conte"] appeared *pro se* to contest the compromise, contending that it was not in the best interest of the debtor and that the Board and the attorneys had no authority to act. The bankruptcy court approved the compromise. Conte appealed.

The Court may decline to consider a bankruptcy appeal because it is moot if there has been substantial consummation of the plan such that effective judicial relief is no longer available, even though a live controversy may still exist. *Matter of Manges*, 29 F.3d 1034, 1039 (5th Cir. 1994). There are three factors involved in determining whether an appeal is moot: (1) whether a stay was obtained; (2) whether the plan has been substantially consummated; and (3) whether the relief requested would affect either the rights of third parties not before the Court or the success of the plan. *Ibid.*

Since this appeal was filed, the bankruptcy court approved the plan of reorganization, of which the compromise was an essential part and which included the sale of debtor's dealership. Conte did not oppose the plan of reorganization and did not move for a stay of the compromise or the plan.

Pursuant to the compromise and plan, Toyota paid debtor $100,000; Toyota's claims in the bankruptcy were stricken; Toyota approved a purchaser for debtor's assets and entered into a franchise agreement with him; and the adversary action was dismissed. The purchaser paid debtor $772,789 for its assets, and distributions of $724,771 were made to creditors. The compromise has been consummated and the plan of reorganization has been substantially consummated.

The rights of third parties not before the Court and the

success of the plan itself would be harmed if this Court upset the compromise. To undo the compromise would undo the sale of debtor's assets, which would undo the plan of reorganization. This would "do nothing other than to create an unmanageable, uncontrollable situation for the Bankruptcy Court." *Manges*, 29 F.3d at 1038-1039 n.6, citing *In re Roberts Farms, Inc.*, 652 F.2d 793, 798 (9th Cir.1981).

This appeal has been rendered moot and appellees' motion to dismiss is GRANTED.

New Orleans, Louisiana, this 16th day of April, 1996.

/s/ Patrick E. Carr

UNITED STATES DISTRICT JUDGE

APPENDIX D

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF LOUISIANA

IN THE MATTER OF:	*	CASE NUMBER:
JOE CONTE TOYOTO, INC.	*	95-12055 JAB
DEBTOR	*	CHAPTER 11

FILED
DEC 8 '95

MOTION AND ORDER FOR LEAVE TO APPEAL

NOW INTO COURT, comes the Debtor in Possession, JOE CONTE TOYOTA, INC., and Insider Claimants and Equity Holders THE JOSEPH P. CONTE FAMILY TRUST, JOSEPH P. CONTE, JR. and CONTE INVESTMENTS, who, pursuant to 28 U.S.C. sec. 158 (a) and BKR R 8003 (a) (c) , move this honorable court for leave to appeal the Order On Compromise rendered October 5, 1995 and November 2, 1995 in the above captioned matter; said judgments granting the "Motion For Authority To Compromise Claim" in regard to the Litigation entitled *Joe Conte Toyota, Inc. et al. v. Toyota Motor Sales U.S.A., Inc. et al,* and brought by purported counsel for the Debtor, Messrs. Evan Howell, III, Craig Cousins, Mark Goldstein, and Ms. Elizabeth Magner and Ms. Alice Bandanna.

I. STATEMENT OF FACT

This matter came on for hearing in the above captioned

matter on October 5, 1995 as a result of a Motion for Authority to Compromise Claims (hereinafter "Motion") brought by purported counsel for the Debtor in Possession, Joe Conte Toyota, Inc. The purpose of said Motion was to obtain judicial authority to compel the Debtor to settle all its outstanding litigation against Toyota Motor Sales U.S.A., Inc., Gulf States Toyota, Inc., John Bishop, Jerry Pyle, Robert Skillern, Toyota Motor Credit Corporation, J.B. McCullough and the Louisiana Motor Vehicle Commission in the action entitled *Joe Conte Toyota, Inc. et al. v. Toyota Motor Sales U.S.A., Inc. et al,* (hereinafter the "Toyota litigation") prior to the sale of certain specified assets of the Debtor's estate to one Mr. Troy Duhon.

Said Motion was filed in this honorable court on September 15, 1995 and was allegedly brought on behalf of the Debtor by its purported attorneys, Messrs. Evan Park Howell, III, Craig Cousins, Mark Goldstein, and Ms. Elizabeth Magner and Ms. Alice Bandanna. However, on August 30, 1995, prior to filing said Motion, the aforementioned attorneys were discharged by Joseph P. Conte, Jr., President and Chairman of the Board of Directors of the Debtor, Joe Conte Toyota, Inc.

On September 29, 1995, Mr. Conte, appearing *pro se* on behalf of the Debtor, filed in this honorable court an Objection to said Motion. In the prayer for relief at the end of his Objection, Mr. Conte sought a continuance of the October 5, 1995 hearing on said Motion, the purpose of which was to retain new counsel to represent him and the Debtor in this matter. However, being unskilled in the practice of law, Mr. Conte did not attach to his Objection an Order for signature by this honorable court granting the continuance as prayed for.

Being an untrained advocate, at the hearing on this matter on October 5, 1995, Mr. Conte did not know to reiterate his motion for continuance; nor did this honorable court, *sua sponte,* rule on Mr. Conte's request for continuance as prayed for in his Objection.

Based on the evidence adduced and the testimony given at the hearing on this matter on October 5, 1995, this honorable court orally granted the Motion brought by the Debtor's putative attorneys, holding that the Compromise of the Toyota litigation was in the best interest of the estate of the Debtor, Joe Conte Toyota, Inc.

In its written reasons for judgment, rendered November 2, 1995, this honorable court entered, among others, the following findings of fact in support of the order approving the Compromise:

> 1. The ownership interests of the debtor, Joe Conte Toyota, Inc. are: Joseph P. Conte, Jr. 25%; The Joseph P. Conte Family Trust 37.5%; Doris L. Conte 37.5%;
>
> 2. On August 17, 1995, by meeting duly called with a quorum being present, the shareholders unanimously elected to the Board of Directors of Joe Conte Toyota, Inc. Joseph P. Conte, Jr., Doris L. Conte and Susan C. Conte; and
>
> 3. On September 12, 1995, at a duly noticed meeting of the Board of Directors of Joe Conte Toyota, Inc. a quorum being present, the Board of Directors approved a settlement between Joe Conte Toyota, Inc. and Gulf States Toyota, Inc.,

Toyota Motor Credit Corporation, Toyota Motor Sales, Inc. and others by a 2 to 1 vote, the dissenting vote being cast by Joseph P. Conte, Jr.

During said hearing, evidence was admitted showing that Messrs. Howell, Cousins and Goldstein, as well as Ms. Magner and Ms. Bandanna had been discharged as the attorneys for the Debtor, Joe Conte Toyota, Inc. on August 30, 1995. Additional evidence was admitted showing that said discharge of the aforementioned attorneys was reiterated on September 8, 1995, September 11, 1995 and September 13, 1995. Thus, based on the evidence admitted at the October 5, 1995 hearing, the Motion brought by the aforementioned attorneys on September 15, 1995 was improperly before the court as the aforementioned attorneys no longer represented the Debtor nor had they any authority to act on behalf of the Debtor.

At the October 5, 1995 hearing, Mr. Conte attempted to introduce further evidence tending to show that he owns 65% of the outstanding stock of the Debtor, Joe Conte Toyota, Inc. and that the Joseph P. Conte Family Trust and Doris L. Conte each own 17.5% of the outstanding shares. The introduction of said evidence was denied by this honorable court based on an objection raised by Ms. Magner as to the authenticity of the proffered evidence. Had this evidence been admitted, it would have shown that the action taken by the putative Board of Directors of Joe Conte Toyota, Inc. on September 12, 1995, approving the Compromise of the Toyota litigation, was of no effect because said putative Board was dissolved by a majority of the shareholders on September 8, 1995.

The excluded evidence was then separately maintained and proffered evidence and the consequences arising therefrom form the basis of this appeal.

II. QUESTIONS PRESENTED AND RELIEF SOUGHT

Debtor in Possession, JOE CONTE TOYOTA, INC., and Insider Claimants and Equity Holders THE JOSEPH P. CONTE FAMILY TRUST, JOSEPH P. CONTE, JR nd CONTE INVESTMENTS submit the following questions for appellate review:

1. Did this honorable court commit reversible error when it did not continue the October 5, 1995 hearing, either as prayed for in Mr. Conte's Objection or on its own motion?

2. Did this honoable court commit reversible error when it found that the ownership interests of the Debtor, Joe Conte Toyota, Inc. are: Joseph P. Conte, Jr. 25%; The Joseph P. Conte Family Trust 37.5%; Doris L. Conte 37.5%?

3. Did this honorable court commit reversible error when it excluded evidence showing that Joseph P. Conte, Jr. owns 65% of the outstanding shares of the Debtor, Joe Conte Toyota, Inc.?

4. Did this honorable court commit reversible error when it found that on September 12, 1995, a majority of the Board of Directors of Joe Conte Toyota, Inc. approved the Compromise of the Toyota litigation?

5. Did this honorable court commit reversible error when it found that the proposed Compromise was in the best interest of the Debtor even though the issue was not properly before the court?

Debtor in Possession, JOE CONTE TOYOTA, INC., and Insider Claimants and Equity Holders THE JOSEPH P. CONTE FAMILY TRUST, JOSEPH P. CONTE, JR and CONTE INVESTMENTS contend that this honorable court committed reversible error on all issues cited above and seek reversal and remand by the United States District Court for the Eastern District of Louisiana on each and every aforementioned issue.

III. STATEMENT OF REASON WHY APPEAL SHOULD BE GRANTED.

At the outset, it must be stressed that the sale of certain specified assets of the Debtor's estate to Mr. Duhon is not at issue. Neither the Debtor, Joe Conte Toyota, Inc., nor Mr. Conte, in his capacity as President and Chairman of the Board of the Debtor, object to the sale of the aforementioned assets of the Debtor's estate to Mr. Duhon. Rather, Mr. Conte objects to the settlement of the Toyota litigation as a condition of the sale of the aforementioned assets of the Debtor's estate to Mr. Duhon for the reasons more fully articulated in the litigation encaptioned *Joe Conte Toyota, Inc. et al. v. Toyota Motor Sales U.S.A., Inc. et al.* and in the Disclosure Statement and Plan of Reorganization pursuant to the bankruptcy in the instant matter.

Debtor in Possession, JOE CONTE TOYOTA, INC., and Insider Claimants and Equity Holders THE JOSEPH P. CONTE FAMILY TRUST, JOSEPH P. CONTE, JR. and CONTE INVESTMENTS assert that a continuance of the October 5, 1995 hearing on the Motion For Authority To Compromise Claim was requested, however unartfully, for the purpose of the Debtor securing new counsel to represent its interests at said hearing. Mr. Conte recognized that the complexity of the issues involved in this litigation and the evidentiary and procedural rules applicable therein are beyond the reasonable competency of a layman, such as himself, representing the Debtor's interests *pro se*. While this honorable court was more than tolerant of Mr. Conte's inexperience in legal procedure during the hearing on October 5, 1995, it was still incumbent on this honorable court to take judicial notice of Mr. Conte's request for continuance.

Notwithstanding the foregoing, Mr. Conte managed to adduce evidence showing that Messrs. Howell, Cousins, Goldstein and Ms. Magner and Ms. Bandanna had been discharged as attorneys for the Debtor on August 30, 1995. Evidence was also admitted showing said discharge was reiterated on September 8, 1995, September 11, 1995 and September 13, 1995. Thus, the aforementioned attorneys had no authority to bring their Motion on behalf of the debtor on September 15, 1995.

At the point in the October 5, 1995 hearing when evidence was admitted proving the discharge of the aforementioned attorneys prior to their filing their Motion forming the basis of said hearing, the interests of justice in this matter would have been best served if this honorable court had recognized, *sua sponte,* that the Motion brought by the discharged attorneys was improperly before the court and

denied said Motion.

Alternatively, when evidence was admitted proving the discharge of the attorneys, the court should have granted a continuance, *sua sponte,* in order for Mr. Conte to secure counsel who would adequately represent the Debtor's interests as prayed for in his Objection.

At the October 5, 1995 hearing, this honorable court admitted into evidence, without authentication, documents propounded by Ms. Magner which are purported to be the originals of the debtor's corporate record book and the Debtor's stock register. Said evidence contains only one Shareholders' Resolution which allegedly show that the outstanding shares of the Debtor, Joe Conte Toyota, Inc. is owned in the following percentages: Joseph P. Conte, Jr. - 25%; The Joseph Conte Family Trust - 37.5%; and Doris L. Conte - 37.5%.

Mr. Conte then attempted to introduce copies of the contents of the corporate record book which he made while said book was in his possession and prior to his release of the book to any other party. Said evidence was not admitted based on Ms. Magner's objection as to its authenticity. Said evidence was then separately maintained and proffered.

Had the proffered evidence been admitted at the October 5, 1995 hearing, this honorable court would have seen that the proffered evidence shows a difference in the alleged share ownership of the Debtor, Joe Conte Toyota, Inc. from the percentage of share ownership contained in the alleged original corporate record book offered by Ms. Magner and admitted into evidence.

The proffered evidence shows that Mr. Conte owns 65%

of the outstanding shares of the Debtor, Joe Conte Toyota, Inc. with the Joseph Conte Family Trust and Doris L. Conte each owning 17.5% of the outstanding shares.

Based on his majority ownership of the stock and pursuant to the authority vested in him by Section X of the Articles of Incorporation of the Debtor, Joe Conte Toyota, Inc., Mr. Conte, in his capacity as Chairman of the Board of Directors and as the majority shareholder of Joe Conte Toyota, Inc. called a Board of Directors' meeting on September 8, 1995 wherein the discharge of the aforementioned attorneys from their representation of the Debtor was confirmed and ratified and wherein Doris L. Conte and Susan C. Conte were removed from the Board of Directors of Joe Conte Toyota, Inc.

Thus, the action taken on September 12, 1995 by Doris L. Conte and Susan C. Conte, in their alleged capacities as members of the Board of Directors of the Debtor, Joe Conte Toyota, Inc., approving the Compromise of the Toyota litigation was of no effect because they were not members of the duly constituted Board of Directors of Joe Conte Toyota, Inc. on September 12, 1995 and were not vested with the authority to bind the corporation to the terms of the Compromise of the Toyota litigation.

This honorable court committed reversible error by excluding the proffered evidence because the court's ruling compels the settlement of the Toyota litigation without there being corporate approval of same by the duly constituted Board of Directors of the Debtor, Joe Conte Toyota, Inc.

Further, on the basis of evidence admitted at the October 5, 1995 hearing, the Motion For Authority To Com-

promise Claims brought by the putative attorneys for the Debtor, Joe Conte Toyota, Inc. was improperly before the court as said attorneys had been discharged over two weeks prior to their bringing said Motion.

Finally, this honorable court should have ruled on Mr. Conte's motion for continuance as prayed for in his Objection prior to the October 5, 1995 hearing or, alternatively, this honorable court should have continued the October 5, 1995 hearing, *sua sponte,* when evidence was admitted showing that the Motion For Authority To Compromise Claims was improperly before the court.

A continuance of the October 5, 1995 hearing would have allowed the Debtor time to obtain new counsel who would have had the requisite expertise to address the complexities presented by this litigation and to adequately protect the Debtor's interests at trial. At the very least, new counsel for the Debtor would have known to subpoena Doris L. Conte, who would have been able to authenticate the proffered Private Act of Donation which increased Mr. Conte's share ownership in the Debtor corporation, Joe Conte Toyota, Inc., to 65%.

WHEREFORE, Debtor in Possession, JOE CONTE TOYOTA, INC., and Insider Claimants and Equity Holders THE JOSEPH P. CONTE FAMILY TRUST, JOSEPH P. CONTE, JR and CONTE INVESTMENTS, pray this honorable court grant its motion for appeal, all in accordance with 28 U.S.C. sec. 158 (a) and BKR R 8003 (a).

Respectfully Submitted:

JOE CONTE TOYOTA, INC.
DEBTOR

BY: /s/ Joseph P. Conte, Jr.
Joseph P. Conte, Jr.
Its President and Chairman of the Board
1815 Canal Street
New Orleans, Louisiana 70112

Insider Claimants and Equity Holders:

THE JOSEPH P. CONTE FAMILY TRUST

BY: /s/ Joseph P. Conte, Jr.
Joseph P. Conte, Jr.
Its Independent Co-Trustee

JOSEPH P. CONTE, JR.

BY: /s/ Joseph P. Conte, Jr.
Joseph P. Conte, Jr.

CONTE INVESTMENTS

BY: /s/ Joseph P. Conte, Jr.
Joseph P. Conte, Jr.
Its President and Director
1815 Canal Street
New Orleans, Louisiana 70112

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: JOE CONTE TOYOTA, INC., DEBTOR	*	CASE NUMBER:
	*	
	*	
	*	SECTION:
	*	

ORDER

Considering the foregoing:

IT IS HEREBY ORDERED that the Motion for Leave to Appeal the Order On Compromise rendered October 5, 1995 and November 2, 1995 in the matter encaptioned "IN THE MATTER OF: JOE CONTE TOYOTA, INC., DEBTOR"; United States Bankruptcy Court for the Eastern District of Louisiana; Case Number 95-12055 JAB; Chapter 11; and brought by Debtor in Possession, JOE CONTE TOYOTA, INC., and Insider Claimants and Equity Holders THE JOSEPH P. CONTE FAMILY TRUST, JOSEPH P. CONTE, JR and CONTE INVESTMENTS, be and is hereby GRANTED.

New Orleans, Louisiana this ____ day of _____, 199__.

UNITED STATES DISTRICT COURT JUDGE

CERTIFICATE

I HEREBY CERTIFY that a copy of the foregoing Motion and Order has been served on the following parties by United States Mail, postage prepaid and properly addressed this 11th day of December, 1995:

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/s/ Joseph P. Conte, Jr.
Joseph P. Conte, Jr.

APPENDIX E

IN THE MATTER OF:	NUMBER:
JOE CONTE TOYOTA, INC.	95-12055-JAB
DEBTORS	CHAPTER 11

FILED
NOV 2 1995

ORDER ON COMPROMISE

On October 5, 1995, this matter came for hearing on the Motion For Authority To Compromise Claim filed by Joe Conte Toyota, Inc., Debtor.

Considering that proper notice was given to all creditors and parties in interest and that one objection was filed herein by Joseph P. Conte, Jr., and after hearing the arguments of counsel for the Debtor and of Joseph P. Conte, Jr. appearing *pro se*, the Court finds that the Compromise between the Debtor and Toyota Motor Sales U.S.A., Inc.; Gulf States Toyota, Inc.; John Bishop; Jerry Pyle; Robert Skillern; Toyota Motor Credit Corporation; J.B. McCullough; and the Louisiana Motor Vehicle Commission is in the best interest of the estate;

IT IS ORDERED that the Debtor is authorized to settle, release, and compromise its claims against Toyota Motor Sales U.S.A., Inc.; Gulf States Toyota, Inc.; John Bishop; Jerry Pyle; Robert Skillern; Toyota Motor Credit Corporation; J.B. McCullough; and the Louisiana Motor Vehicle Commission as asserted in a suit entitled *Joe Conte Toyota, Inc.*

v. Toyota Motor Sales U.S.A., Inc.; Gulf States Toyota, Inc.; John Bishop; Jerry Pyle; Robert Skillern; Toyota Motor Credit Corporation; J.B. McCullough; and the Louisiana Motor Vehicle Commission pending in the United States Bankruptcy Court for the Eastern District of Louisiana under adversary proceeding number 95-1114-JAB (the Lawsuit) as follows:

1. The Debtor and Defendants have agreed to settle and compromise their claims against each other including but not limited to those contained in the Lawsuit under the following terms and conditions:

   a. The Defendants compromise, release, acquit and discharge claims against the Debtor, arising out of or related to the business relationships each has with the Debtor whether accrued or nonaccrued, assserted or unasserted, contingent, liquid, mature, now existing or hereafter arising known or unknown, including but not limited to those claims contained in the Lawsuit, Schedule of Assets and Liabilities filed by Debtor, or any Proof of Claim now filed or subsequently filed by Defendants.

   b. The Defendants will pay to the Debtor the sum of $100,000.00.

   c. The Defendants will approve Mr. Troy Duhon or his designee as successor dealer operator of the Joe Conte, Inc. franchise and award him a Dealer Sales and Service Agreement for the New Orleans area, under terms and conditions substantially similar to other agreements now existing with other Dealer Operators holding

contracts with Gulf States Toyota, Inc.

d. The Defendants shall approve the Canal Street location for all operations of the dealership for the next fifteen (15) months.

2. As further consideration for the release of claims by Debtor against the Defendants, the terms of the Sale Agreement between the Debtor and Duhon are to be amended:

a. Duhon will lease the property located at 1815 Canal Street for a minimum term of fifteen (15) months at $6,000 per month.

b. The purchase price for the Debtor's assets as listed in the Sales Agreement shall be increased by $110,000.00, payable over forty (40) months at $2750.00 per month.

c. Mr. Duhon will negotiate for the purchase of certain judgment claims held by third parties against Joseph P. Conte, Jr. and secured by certain real property owned by Joseph P. Conte, Jr. and located in New Orleans East (the "JPC Secured Claims") which if successfully obtained may result in the acceleration of the amounts due on the increased purchase price. In the event the amount paid to the JPC Secured Creditors on the JPC Secured Claims is less than $610,000.00, then any difference will be paid to the Debtor as an advance payment on the increased purchase price. If the amount paid the JPC Secured Creditors on the JPC Secured Claims is less than $500,000.00 then any difference between the amount paid and $610,000.00 will be divided as follows: (1) The first $110,000.00 will be paid to the

Debtor; (2) Duhon may use up to $20,000.00 to satisfy the actual cost of acquiring the properties through foreclosure, and then (3) any additional sums shall be divided evenly between Debtor and Duhon.

d. All other terms and conditions of the purchase and sale agreement with Duhon shall remain as originally negotiated.

New Orleans, Louisiana, this 2nd day of November, 1995.

/s/ J.A. Brown

Honorable Jerry A. Brown
United States Bankruptcy Judge

Respectfully submitted,

/s/ Craig M. Cousins

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11/02/95-av

APPENDIX F

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

IN THE MATTER OF

JOE CONTE TOYOTA, INC.

DEBTOR

BANKRUPTCY NO. 95-12055-JAB

CHAPTER 11 REORGANIZATION

DOCKETED
NOV 2 1995

REASONS FOR ORDER APPROVING COMPROMISE

This matter came on for hearing on October 5, 1995 as a hearing on the debtor's motion for authority to compromise claim of Joe Conte Toyota, Inc. against Toyota Motor Sales U.S.A., Inc.; Gulf States Toyota, Inc.; John Bishop; Jerry Pyle; Robert Skillern; Toyota Motor Credit Corporation; J.B. McCullough; and the Louisiana Motor Vehicle Commission. (Pl. 71). The court granted the motion at the hearing, finding that the compromise was in the best interest of the estate. (Pl. 85). The court enters the following findings of fact and conclusions of law in support of the order approving the compromise.

Findings of Fact

1. The ownership interests of debtor, Joe Conte Toyota, Inc., are as follows:

Joseph P. Conte, Jr.	25%
The Joseph P. Conte Family Trust	37.5%
Doris L. Conte	37.5%

Testimony of Susan C. Conte, Joseph P. Conte, Jr.; Debtor's Exhibits 1 and 5).

2. On August 17, 1995, by meeting duly called with a quorum being present, the shareholders unanimously elected to the Board of Directors of Joe Conte Toyota, Inc.:

Joseph P. Conte, Jr.

Doris L. Conte

Susan C. Conte

(Testimony of Susan C. Conte; Debtor's Exhibits 2 and 14)

3. On September 12, 1995, at a duly noticed meeting of the Board of Directors of Joe Conte Toyota, Inc., a quorum being present, the Board of Directors approved a settlement between Joe Conte Toyota, Inc., Gulf States Toyota, Inc., Toyota Motor Credit Corporation, Toyota Motor Sales, Inc., and others by a vote of 2 to 1. Mr. Joseph P. Conte, Jr. voted against the settlement. The settlement contains the following conditions:

In exchange for an amicable settlement by and between Gulf States Toyota, Inc., Toyota Motor Credit Corporation, Toyota Motor Sales, Inc., Doris L. Conte, Susan C. Conte and the debtor, Troy Duhon will increase his offer to purchase the assets of the debtor itemized in the Sales Agreement between him and the debtor, by $110,000 payable over 40

months at $2,750.00 per month and execute a lease worth $90,000.00 over certain real property located on Canal Blvd. In addition, Gulf States Toyota, Inc., Toyota Motor Credit Corporation, and Toyota Motor Sales will pay to the debtor the sum of $100,000.00 and release all claims each may have against Doris L. Conte, Susan C. Conte, the Conte Family Trust, and/or the debtor, including but not limited to all proofs of claim filed within the bankruptcy proceedings entitled *In re Joe Conte Toyota, Inc.,* Case No. 95-12055-JAB, pending in the United States Bankruptcy Court for the Eastern District of Louisiana, in exchange for a release by Doris L. Conte, Susan C. Conte, and the debtor of all claims held against any of them. (Testimony of Susan C. Conte; Debtor's Exhibit 4.

4. The claims contained in the litigation pending in the United States Bankruptcy Court for the Eastern District entitled *Joe Conte Toyota, Inc., et al. v. Gulf States Toyota, Inc., et al.,* Adversary No. 95-1114-JAB (the "GST Litigation"), are the subject of the settlement along with all asserted and unasserted claims held by the settling parties, including certain proofs of claim filed by Toyota Motor Credit Corp. in the amount of $258,000.00 and Gulf States Toyota in the amount of $50,000.00. (Testimony of Susan C. Conte).

5. The GST Litigation raises the question as to the existence of the Dealer Sales and Service Agreement alleged to be owned by the debtor and subject to assignment to Duhon. An adverse ruling in the GST Litigation to the effect that the Conte Dealer Sales and Service Agreement did not survive the attempts of Gulf States Toyota, Inc. at termination would void the Duhon Sale. (Testimony of Michael R. Allweiss).

6. The proceeds of the Duhon Sale will satisfy all non-insider claims against the debtor's estate. (Testimony of Susan C. Conte).

7. In order to pursue the GST Litigation, the debtor would be required to expend over $250,000.00 in expenses and additional legal fees. (Testimony of Michael A. Allweiss).

8. The debtor lacks sufficient funds with which to retain counsel to pursue the GST Litigation. (Testimony of Susan C. Conte and Michael R. Allweiss).

Conclusions of Law

1. A bankruptcy judge may approve a settlement if the settlement is in the best interest of the estate. The criteria to be considered are: (1) the probability of success in the litigation, with due considertion for the uncertainty in fact and law, (2) the complexity and likely duration of the litigation and any attendant expense, inconvenience and delay, and (3) all other factors bearing on the wisdom of the compromise. *In re Jackson Brewing Co.,* 624 F.2d 605, 609 (5th Cir. 1980); *citing, Protective Committee for Independent Stockholders of TMT Trailer Ferry v. Anderson,* 390 U.S. 414, 424-25, 88 S.Ct. 1157, 1163, 20 L. Ed. 2d 1, 9-10 (1968). *See also In re Emerald Oil Co.,* 807 F.2d 1234, 1239 (5th Cir. 1987).

2. The settlement is in the best interest of the debtor because of the complexity of the litigation, length of time needed to obtain a judgment, risk of loss of the Duhon sale, cost of pursuing the claims against the defendants, risk of an adverse judgment against the debtor, reduction in admin-

istrative costs, and reduction in unsecured claims against the debtor's estate. The settlement further assures that all non-insider claims will be paid in full.

An Order On Compromise will be entered in accordance with these reasons.

New Orleans, Louisiana, this 2nd day of November 1995.

/s/ J.A. Brown

JERRY A. BROWN
UNITED STATES BANKRUPTCY JUDGE

EVAN PARK HOWELL
ELIZABETH W. MAGNER
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APPENDIX G

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

FILED
JUL 18 '95

IN THE MATTER OF	NUMBER 95-12055
JOE CONTE TOYOTA, INC.	CHAPTER 11 REORGANIZATION
DEBTOR	

LIQUIDATIONG PLAN OF REORGANIZATION

Joe Conte Toyota, Inc., Debtor-in-Possession herein, hereby presents and proposes this, its Liquidating Plan of Reorganization pursuant to the provisions of Chapter 11, United States Bankruptcy Code. § 1101 *et seq.*, unless otherwise distinguished, all references to the rights and obligations of the Debtor shall also include any after-apponted trustee.

ARTICLE II

PLAN FOR THE REORGANIZATION OF THE DEBTOR

2.01 On June 7, 1995, Joe Conte Tonte Toyota, Inc. filed a Voluntary Petition for Relief under Chapter 11 of the United States Bankruptcy Code.

2.02 The rights afforded under this Plan shall be in

exchange for and in complete satisfaction, discharge or release of all existing claims of any nature whatsoever against the Debtor or Debtor-In-Possession, or any of its assets or property, except as otherwise provided for herein. Upon the Confirmation Date, all existing claims against the Debtor or the Debtor-In-Posssession shall be satisfied, discharged and released in full in accordance with the terms of this Plan; and all creditors shall be precluded from asserting against the Debtor or its assests or properties or the assets or properties transferred pursuant to this Plan, any other or further claims based upon any acts of omission, transaction or other activity of any kind, nature, or description that occurred prior to the Confirmation Date specified in §502(g),, 502(h) or 502(i) of the Bankruptcy Code whether or not:

(a) Proof of the Claim is filed or deemed filed under §501 of the Bankruptcy Code:

(b) Such Claim is allowed under §502 of the Bankruptcy Code;

or

(c) The holder of such Claim has accepted the Plan.

Upon the entry of a Final Order confirming this Plan the debtor shall sell certain specified assets, more particularly described in the Agreement To Sell and Purchase Assets by and between Debtor and Troy Duhon dated April 25, 1995, a copy of which is attached to the Disclosure Statement. The proceeds thereof shall be deposited into a distribution account along with any and all proceeds received from operations and the liquidation of the operations. Distributions to Creditors and other Claimants shall be made out of this fund and in

accordance with the terms of this Plan. All sales of Debtor's assets shall be free and clear of all liens and encumbrances.

Except as otherwise provided for in this Plan, upon the Confirmation Date, title to all assets and properties of the Debtor or Debtor-In-Possession shall pass to the Debtor, free and clear of all Claims and the Confirmation Order shall be a judicial determination of discharge of the Debtor's liabilities.

ARTICLE III
DIVISION/DESIGNATION OF CLAIMS/INTERESTS INTO CLASSES

For the purpose of payment of the Debtor's obligations under the Plan, the Claims and Interests, to the extent Allowed, of the following creditors are divided in the following classes which shall be mutually exclusive:

3.01 An Allowed Claim is part of a particular class only to the extent that the Allowed Claim qualifies within the definition of that clas and is in a different class to the extent that the remainder of the Claim qualifies within the description of a different class.

(A) *Class 1* - Class 1 shall consist of all Allowed Priority and Administrative Claims.

(B) *Class 2* - Class 2 shall consist of all Allowed Priority Claims.

(C) *Class 3* - Class 3 shall consist of all Allowed Secured Claims of Toyota Motor Credit Corporation.

(D) *Class 4* - Class 4 shall consist of all Allowed Unsecured Claims.

(E) Class 5 - Class 5 shall consist of Claims due all Insiders other than as a result of their ownership interests in the Debtor.

(F) *Class 6* - Class 6 shall consist of Claims of Equity Holders for capital or as a result of their ownership Interests in the Debtor.

ARTICLE IV

SPECIFIC TREATMENT OF CLAIMS

The claims of creditors will be satisfied in the following manner upon approval of the Bankruptcy Court.

4.01 *Class 1 - Administrative Expenses.* Administrative expenses representing liabilities incurred in the ordinary course of business by the Debtor (including amounts owed to vendors and suppliers which sold goods or furnished services to the Debtor since the Petition date or liabilities arising out of loans or advances to the Debtor) will be paid by the Debtor in accordance with the terms and conditions of the particular transactioin and any agreements relating thereto.

Debtor will pay Claims specified in Section 5.03 (b) (2) (4) in full and in cash, upon the later of (1) the Consummation Date; (ii) the first Business Day which follows the tenth day after entry by the Court of a Final Order allowing such expenses; or (iii) such date as may be agreed to between

Debtor and the holder of an Administrative Expense claim of this type. Administrative Expenses shall be paid from the Distribution Fund in preference to all other classes of Claims.

4.02 *Class 2 - Allowed priority Claims.* Each holder of an Allowed Priority Claim falling within Class 2 will be paid in full on the later of:

(a) thirty days (30) following the Consummation Date or, if such Claim is objected to, the date of the Final Order allowing any such Claim, or

(b) upon such other terms as may be agreed to between the Debtor and the holder of each such Claim. If the cash in the Distribution Fund after satisfying Administrative Claims is insufficient to pay all Allowed Priority Claims in full, then all Allowed Priority Claims will receive a pro rata share of the remaining cash in the Distribution fund.

4.03 *Class 3 - Secured Claims*: Each holder of an Allowed Secured Claim falling within Class 3 will be paid in accordance with the terms of its contract with the Debtor.

4.04 *Class 1 - Allowed Unsecured Claims:* Each holder of an Allowed Unsecured Claim shall receive a percentage equal to the Allowed Secured Claim a pro rata share of the remaining cash in the Distribution Fund after satisfying the Claims in Classes 1 and 2 upon the later of (i) thirty (30) days following the Consummation Date; or, (ii) if such Claim is disputed or the subject of any avoidance action, the date of the Final Order allowing any such Claim. Unclaimed or returned distributions shall be payable to the Distribution Fund. Unclaimed or returned distributions shall include, and

shall not be limited to (i) the funds returned by the holder of an Allowed Unsecured Claim if not due; (ii) funds returned as undeliverable aqfter being forwarded to a holder of an Allowed Unsecured Claims's last known address and held without demand for one (1) year; (iii) checks not presented to the Debtor's bank for payment within six (6) months of the date forwarded to the holder of the Allowed Unsecured Claim.

4.05 *Class 5 - Insider Claimaints.* Insider Claimants shall receive any funds of the Debtor in excess of the funds needed to satisfy Claims in Classes 1,2,3, and 4 in full, *as well as pursue the Litigation.*

4.06 *Class 6 - Equity Holders:* Equity Holders shall receive any funds of the Debtor in excess of the funds needed to satisfy Classes 1, 2, 3, 4, and 5 in full, *as well as pursue the Litigation, but in any event, will retain their ownership interests in the Common Stock of the Debtor.*

APPENDIX H

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

IN THE MATTER OF	NUMBER 95-12055
JOE CONTE TOYOTA, INC.	
DEBTOR	CHAPTER 11 REORGANIZATION

FIRST AMENDED DISCLOSURE STATEMENT PROPOSED BY JOE CONTE TOYOTA, INC.

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ARTICLE II.

GENERAL INFORMATION ABOUT DEBTOR

A. *History, Ownership and Management of Debtor.*

The Debtor is a Louisiana Corporation formed in 1972, with its principal place of business located in the Parish of Orleans, State of Louisiana. In September of 1972, Conte entered into a Toyota Sales and Service Agreement ("Dealership Agreement") with Gulf States Toyota (hereinafter "GST") and Toyota Motor Sales, U.S.A., Inc. (hereinafter "TMS"), for the opertion of a Toyota dealership in New Orleans, Louisiana. Conte is theCity's oldest Toyota dealer and the only Toyota dealership in Orleans Parish. Conte has continued to exclusively operate and function as a Toyota dealer on behalf of GST and TMS from September, 1972 until present. The Debtor was originally owned and managed by Joseph P. Conte, Sr., then later by Joseph P. Conte, Sr. and his son, Joseph P. Conte, Jr. Upon the elder Conte's death in 1993, ownership of his shares transferred to the Joseph P. Conte Family Trust and his wife, Doris L. Conte. The Debtor continues to be managed by Joseph P. Conte, Jr.

B. *Events Leading To Bankruptcy.*

Under the terms of the Dealership Agreement TMS is the importer of Toyota vehicles to the United States as well as a domestic manufacturer. GST is the distributor of Toyota vehicles for the Gulf States region and Conte's direct supplier of inventory. Toyota Motor Credit Corporation ("TMCC") is the floor plan, retail, lease, real estate, and working capital financier for Toyota dealers. The relationship

between Conte, TMS and GST has, almost from the beginning, been fraught with conflict. In November of 1983, Conte instituted suit against TMS and GST based on certain breaches of its Dealership Agreement.[1] Conte alleged in part that both TMS and GST were not supplying Conte with sufficient vehicles of the type needed and were forcing Conte to accept vehicles with costly and unwanted distributor options, not ordered by Conte, in an effort to increase GST profits. Conte additionally claimed that it was being requird to reimburse GST for freight charges which exceeded GST's actual costs.

In September of 1984, Conte, GST, and TMS entered into a compromise and settlement agreement. As a result of the settlement, Conte and GST entered into a new Toyota sales and service agreement approved and endorsed by TMS, with an initial term of six years, and an automatic renewal for an additional six year term. Conte believed that subsequent to the settlement, GST, TMS, and Conte could repair their relationship and move forward.

Neverless after the execution of the settlement, GST continued to charge Conte for excess freight charges associated with delivery of vehicles in an amount exceeding actual costs. When this was brought to GST's attention, GST refused to amend its practice.

From the early 1980's, GST advised Conte that it woud begin charging an additional $225.00 per vehicle for a "market action fund." Conte asserted that this charge

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[1] Joe Conte Toyota, Inc., Joseph P. Conte and Joseph P. Conte, Jr., individually v. Toyota Motor Company, Ltd., Toyota Motor Sales U.S.A., Inc. And Gulf States Toyota, Inc., civil action no. 83-6604, filed in the united States District Court for the Southern District of Texas.

violated its Dealership Agreement as it added an additional charge which was neither authorized or requested. Again GST ignored Conte's objection.

In January of 1988, Conte entered into a contract to finance its operations through TMCC. The initiual inventory financing line was up to $6,000,000.00 for new vehicles and an additional $600,00.00 for used vehicles. The initial funding was for $2,00,000.00 for new vehicles and $200,000.00 for used vehicles. However, TMCC assured Conte that its line could be increased at any time should it desire additional shipments of vehicles. In 1989, Conte requested tht TMCC increase its plan financing line.[2] Additionally, Conte requested a $3,300,000.00 line of credit for the purpose of constructing a new dealership facility in eastern New Orleans (a move prompted by the requirements of GST and TMS). In early 1989, TMCC approved a real estate loan for $3.3 million for the new facility. In June of 1989, TMCC announced that it would not fund new vehicles shipped by GST or TMS except at levels necessary to maintain sales at approximately 33-50% of Conte's sales potential as established by GST and TMS.

As a result of TMCC's decision to limit financing, Conte was unable to receive the additional shipments of vehicles offered by GST. At the time of TMCC's decision, Conte was not in violation of its financing agreement, nor did TMCC cite any particular provision of the financing arrangement which would allow TMCC to arbitrarily control Conte's sales levels through the floor plan financing limits.

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[2] Conte's potential sales market as established by GST and TMS would have justified a $4,000,000.00 line of credit. in an effort to reach planning potential, Conte was entitled to additional allotments of vehicles which were available from GST necessitating an increase in its credit facility.

When Conte's Dealership Agreement automatically renewed for six years in October of 1990, GST attempted to reduce the term to 18 months by requiring Conte to sign a new Dealership Agreement. Conte believed that this decision was made in retaliatioin for Conte's delay in building a new facility in New Orleans East, its objectioins to the market action fund charges, and freight costs. In response to GST's actions Conte instituted suit against GST in the United States District Court for the Eastern District of Louisiana. In response to the suit GST withdrew its demand for a new Dealership Agreement.

Subsequently, GST continued to delay, refuse, or fail to deliver motor vehicles to Conte. GST delayed shipment of vehicles until the end of the calendar month, and failed to provide consistent, reliable vehicle availability so as to permit planning by Conte and allow it to sufficiently advertise its product and forecast its inventory. When vehicles were shipped the models, series, and colors provided were not in proportion to that reveived by other dealers serviced by GST.

In March of 1991, TMCC notified GST to suspend all shipments of cars to Conte because it was over its credit limit. Eventually, TMCC reopened the floor plan financing line.

In October of 1992, TMCC again suspended the floor plan financing of Conte and notified GST not to ship vehicles to Conte. TMCC alleged that Conte continued to delay settling sales of cars within its requirements though no financial defaults had occurred.

As a result of TMCC's actions, Conte began searching for outside financing and in December of 1994, it approached

First National Bank of Commerce (hereinafter "FNBC") for a floor plan line of credit. FNBC requested confirmation that GST and TMS would support the Conte dealership. Much to Conte's amazement, GST and TMS elected to advise FNBC that they would not support their dealer, which ultimately resulted in FNBC's denial of financing. Based on TMCC 's previous limits on the floor plan financing line, inventory levels of the dealership were insufficient to support its sales potential. This resulted in a higher per vehicle overhead cost than was necessary. Based on Conte's lower sales, GST refused to ship preferred vehicles and began allocating to Conte vehicles with less desireable options, colors, or model lines. This placed further pressure on the Conte staff to sell vehicles at reduced cost and reduced profit in order to insure sales. Cash flow became a critical problem. Despite the pressures, Conte continued to sell every car shipped and to honor its commitment to its lender.

In March of 1993, Joseph P. Conte, Sr. died, and Conte notified GST that Joseph P. Conte, Jr. would be operating the dealership on behalf of its stockholders.

In July of 1993, GST notified Conte that it planned to terminate the Dealership Agreement within ninety days because of inadequate floor plan financing and the death of Mr. Conte, Sr. GST immediately closed future shipments of vehicles.

As a result of GST, TMCC, and TMS' actions Conte instituted suit in Civil District Court for the Parish of Orleans (the "Litigation"). alleging:

1. Violations of State and Federal Law for dealer protection;
2. Breach of the Dealership Agreement;
3. Breach of the Settlement and Compromise Agreement;
4. Breach of the Financing agreeemnt;
5. Unfair trade practices;
6. Anti-trust violations; and
7. other causes of action.[3]

As a result of the suit the Court ordered injunctive relief in favor of Conte and forbidding GST from terminating the Dealership Agreement during the pendency of the suit. though a significant victory Conte was still left with no financing and no inventory while the case was brought to trial.

As can be expected, through the Litigation TMS, GST, TMCC have conducted an all out offensive to terminate their contractual relationships with Conte, as well as set an example with other dealers. In addition to the financial burden of maintaining the Litigation, Conte, now in the position of being denied inventory by TMS and GST and financing by TMCC, was forced to maintain its operations on the strength of its parts, service department, and body shop. this too proved to be more difficult than necessary when GST refused to ship even parts to Conte in conjunction with their refusal to ship vehicle inventory.

To date the management of Conte has been able to obtain parts, at greater cost, from other suppliers, distributors, and dealers. Despite efforts by Conte's management, the shareholders of the corporation have been forced to infuse

[3] The suit was subsequently removed to the U.S. Bankruptcy Court for the Eastern District of Louisiana, and has been assigned adversary no. 95-1114.

into the Debtor almost $1 million dollars in shareholder loans and paid in capitl in order to cover cash shortfalls. Luckily for Conte its shareholders were in a financial position to personally fund its operations while the Litigation progressed. However, as the Litigation continued, actions by the defendants effected the operations and even the shareholders' ability to infuse cash became stressed. As it became clear that Conte's estimates on the time needed to prepare for trial and costs of Litigatiaon were far short of actual experience, the Debtor became strapped for cash and because of a lack of funding, the Litigation stalled.

Shortly before filing bankruptcy, Conte received an offer to purchase the its assets and goodwill. Due to the financial difficulties of the corportion, the deterioration of its relationship wtih TMCC, TMS, and GST, and the pending and viable offer to purchase the assets, Conte believed it to be in the best interest of its creditors to institute this Chapter 11 proceeding for thepurpose of an orderly liquidation of its assets.

B. *Post Petition Business Activities*

Conte intends to discontinue operations as they exist today. This a liquidating plan of reorgnization which at its center requests authority to sell certain of the debtor's assets, including, but not limited to, inventory, equipment, leasehold rights, and its rights in and to the Dealership Agreement in exchange for a cash payment. The terms of the sale are set forth in an Agreement To Sell and Purchase Assets ("Sales Agreement") attached heretwo as Exhibit "A".

Generally the Sales Agreement provides that specified assets will be sold as is, where is, without express or implied

warranties. The purchase price is $600,000.00, plus the cosst of all parts and assessories inventory as listed in the most recent GST parts and accessories catalogue as of the date of closing. Parts and accessories not otherwise listed shall be sold on consignment by the purchaser. A $60,000.00 deposit on the sale has been received by the Debtor (the "Duhon Sale"). The entry of a Final Order of confirmation of the debtor's Plan of Reorganization shall constitutre authorization of the Bankruptcy Court to execute the sale described in Exhibit "A" attached hereto, under terms and conditions substantially similar to those contained in the Purchase Agreement. The sale shall be free and clear of all liens and encumbrances against the assets transferred. All creditors of the Debtor agree to to take whatever action or execute any and all documents necessary to effectuate the sale and to effectuate the terms of the Plan.

GST has taken the position that the Dealership Agreement between itself and Conte terminated pre-petition and as such Conte has no rights to assign to Duhon. Conte disputes this position and as part of plan confirmation will request that the Bankruptcy Court confirm Conte's property interest in the Dealership Agreement.

C. *Significant Events Post-Filing.*

1. On June 9, 1995, Conte filed a petition to remove the Litigation to the United States District Court for the Eastern District of Louisiana.

2. Due to the flood of May 9, 1995, Conte's repair and service work has increased substantially. The Debtor has also instituted cost cutting measures to ensure post petition profitability.

D. *Pending Litigation.*

1. *Joe Conte Toyota, Inc. et al vs. Toyota Motor Sales, U.S.A. Inc. et al.,* United States Bankruptcy Court for the Eastern District of Louisiana, adversary no. 95-1114. Nature: Breach of contract, antitrust, fraud, etc.

2. *Joe Conte Toyta, Inc. v. Watson Investments, Inc .,* Civil District Court, Parish of Orleans, No. 93-2403 "D", Case Pending.

3. *Roberta Maestri v. Joe Conte Toyota, Inc.,* Civil District Court, Parish of Orleans, No. 94-1019 "I". Case Pending.

4. *Peter Pappas v. Randall Addison, Joe Conte Toyota, Inc., and MIC Property and Casualaty Insurancae Corportion,* Civil District Court, parish of Orleans, No. 95-196 "E". Case Pending.

5. *Catherine Holmes Jones v. Joe Conte Toyota, Inc.,* First City Court, Parish of Orleans, No. 95-51591 "B". Case Pending.

6. *Paul N. Kitchen v. Joe Conte Toyota, Inc.,* First City Court, Parish of Orleans, No. 92-53618 "A". Case Pending.

7. *Monique Manning v. Joe Conte Toyota, Inc.,* Civil District Cout, Parish of Orleans, Case Pending.

8. *Cheryl A. Staley v. Joe Conte Toyota, Inc.* First City Court, Parish of Orleans, No. 92-56324 "A", Case Pending.

9. *Gina Hellmeyer v. Joe Conte Toyota, Inc.,* Civil District Court, Parish of Orleans, No. 93-3903 "A", Case Pending.

10. *Ostler International, Inc. D/B/A Certi-Fit Body Parts v. Joe Conte Toyota, Inc.* First City Court, Parish of Orleans, No. 95-53409 "B", Case Pending.

11. *Patrick D. Breeden Esquire v. Joseph P. Conte, Jr. and/or Joseph P. Conte, Jr. as Trustee of the Joseph P. Conte Family Trust and/or Joe Conte Toyota, Inc.,* Civil District Court, Parish of Orleans, No. 94-19178 "A", Case Pending.

12. *James E. Young, Jr. v. Joe Conte Toyota, Inc., Toyota Motor Sales, U.S.A, Inc. and Gulf Management Company and/or Warranty Services, Inc.,* Civil District Court, Parish of Orleans, No. 90-20542 "A", Case Pending.

13. *Joseph P. Conte D/B/A Joseph Conte Toyota, Inc. v. Geraldine Blanchard,* First City Court, Parish of Orleans, No. 94-50245 "C", Case Pending.

14. *Eugene & Gaynell Johnson v. Joe Conte Toyota, Inc.,* First City Court, Parish of Orleans, No. 94-30074 "C", Case Pending.

15. *Ashton and Anna Mouton, Jr. v. Joe Conte Toyota, Inc. Toyota Motor Sales, U.S.A., Inc. and Dealer Administrative Services, Inc., et al.,* First City Court, Parish of Orleans, No. 93-57587 "A", case pending.

16. *Joe Conte Toyota, Inc.; Joseph P. Conte Family Trust and Joseph P. Conte, Jr. v. Toyota Motor Sales, U.S.A. Inc.;*

Gulf States Toyota, Inc.,; John Bishop; Jerry H. Pyle; Robert Skillern; Toyota Motor Credit Corporation; J.B. McCullough; and the Louisiana Motor Vehicle Commission, Civil District Court, Parish of Orleans, Case No. 93-2305 'M", removed to The United States Bankruptcy Court For The Eastern District of Louisiana, Adversary No. 95-1114, Case Pending.

17. *Mary Louise Kuntz, wife of, and Vincent M. Bonadona v. Joe Conte Toyota, Inc.,* First City Court, Parish of Orleans, No. 90-54013 "C", Case Pending.

18. *Joe Conte Toyota, Inc. v. Leonard Estopinal and St. Bernard Bank & Trust Company,* Civil District Court, Parish of Orleans, No. 95-3263 "A", Case Pending.

19. *Gwendolyn and Peter Willis v. Paul Gauthier D/B/A Paul's Service Center; Joe Conte Toyota, Inc., and Auto Course, Incorporated,* Civil District Court, Parish of Orleans, No. 89-2002 "H', Case Pending.

20. *Kevin Patrick Quinn v. Joe Conte Toyota, Inc,* First City Court, Parish of Orleans, No. 90-51471 "B", Case Pending.

21. *Cross Marine, Inc. v. Joe Conte Toyota, Inc.,* Civil District Court, Parish of Orleans, No. 87-22038 "B", Case Pending.

22. *Maurice P. Cusacha, Jr. v. Joe Conte Toyota, Inc.,* First City Court, Parish of Orleans, No. 306-470, Case Pending.

23. *Ruben Cohen v. Joe Conte Tpyota, Inc. et al,* Civil

District Court, Parish of Orleans, No. 88-8664 "B", Case Pending.

24. *Jack Sheltan, III v. Joe Conte Toyota, Inc.,* First City Court, Parish of Orleans, No. 88-30813 "A", Case Pending.

25. *Joe Conte Toyota, Inc. v. Alvin McMillian D/B/A McMillian Automotive,* First City Court, Parish of Orleans, No. 89-50538 "B", Case Pending.

26. *Winston Dopwell v. Joe Conte Toyota, Inc.,* First City Court, Parish of Orleans, No. 92-30856 "B", Case Pending.

27. *Gail Pierre v. Joe Conte Toyota, Inc.,* First City Court, Parish of Orleans, No. 89-55401, Case Pending.

28. *Edward M. Morris v. Joe Conte Toyota, Inc., John Hennessey and Etienne Gill,* Civil District Court, Parish of Orleans, No. 89-17250, Case Pending.

29. *Robert L. Atkinson v. Joe Conte Toyota, Inc.,* First City Court, Parish of Orleans, No. 90-52701 "B", Case Pending.

E. *Financial Debt With Respect To Operations.*

1. A balance sheet and income statement as of May 31, 1995, attached hereto as Exhibit "B".

2. Statement of operations and cash flow January 1, 1995, through May 31, 1995, is attached hereto as Exhibit "C".

3. A balance sheet and income statement as of December 31, 1994, is attached hereto as Exhibit "D".

ARTICLE V

DESCRIPTION CLASSIFICATION, AND TREATMENT OF CREDITORS UNDER THE PLAN

The Plan classifies claims separately in accordance with the Bankruptcy Code and provides different treatment for different classes of claims. As described more fully below, the Plan provides separately for each class, either that the claims are unimpaired or that holders of the claims will receive various types of considertaion, thereby giving effect to the different rights of the holders of the claims in each class.

A. *Administrative Expense Claims (Class 1)*

Administrataive Expenses are claims against the Debtor constituting a cost or exense of administration of the Bankruptcy Proceeding allowed under § 503 (b) of the Bankruptcy Code, including any actual necessary costs and expenses of preserving the estate of the Debtor, any actual costs and expenses of operting the business of the Debtor, any indebtedness or obligations incurred or assumed by the Debtor in connection with the conduct of Debtor's business or for the acquisition or lease of property, or the rendition of services, any allowance of compensation or reimbursement of expenses to the extent allowed by final order, under § 330 of the Bankruptcy Code, whether arising before or after the consummation date, and fees or charges assessed against the estate of the Debtor under § 1930, chapter 123, title 28, of the United States Code.

Administrative Expenses representing liabilities incurred in the ordinary course of business by the Debtor (including

amounts owed to vendors and suppliers which sold goods or furnished services to the Debtor since the Petition Date, or liabilities arising out of loans or advances to the Debtor) will be paid by the Debtor in accordance with the terms and conditions of the particular transaction and any agreements relating thereto.

Conte will pay the Claims specified in § 503 (b) (2) - (4) in full and in cash, upon the later of (i) the Consummation Date, or (ii) the first Business Day which follows entry by the Court of a Final Order allowing such expenses.

Counsel for Conte anticipates filing an application seeking compensation for services and expenses rendered thirty days prior to cnfirmation. Debtor's accountant, Stanley J. Mongrue, will file a similar application. Additional applicatioins will be filed for services rendered subsequent. If all accrued fees and expenses as well as those anticipated through confirmation are awarded, it is estimated that administrative expenses of the type provided for in § 503 (b) (2) - (4) of the Bankruptcy Code through the Confirmation Date will total approximately $60,000.00.

B. *Priority Claims- (Class 2)*

Priority Claims are Claims against the Debtor entitled to priority under Section 507 of the Bankruptcy Code other than Administrative Claims;

Each holder of an Allowed Priority Claim falling within Class 2 will be paid in full on the later of: (i) thirty days (30) following the Consummation Date or, if such Claim is objected to, the date of the Final Order allowing any such Claim;

or (ii) upon such other terms as may be agreed to between the Debtor and the holder of each such Claim. If the cash in the Distribution Fund after satisfying Administrative Claims is insufficient to pay all Allowed Priority Claims in full, the all Allowed Priority Claims will receive a pro rata share of the remaining cash in the Distribution Fund.

It is estimated that Priority Claims as provided in § 507 of the Bankruptcy Code through the Confirmation Date will total approximately $59,000.00. Priority Claimants are listed on Exhibit "F" attached hereto.

C. *Secured Claims Of Toyota Motor Credit Corporation (Class 3).*

1. Description of Claims. The only Secured Claim against the debtor is held by TMCC in the approximate amount of $4,000.00 as of June 7, 1995. It is evidenced by two promissory notes both executed by the Debtor, the first on December 13, 1990, in the original principal amount of $11,257.14, payable in monthly installments of principal and interest equal to $244.44, beginning on January 27, 1991, and continuing monthly thereafter for sixty (60) months ("Note One"). Note One is secured by a vehicle owned by Conte and generally described as a 1991 Toyota Pickup Truck, VIN JT4RN82POM530349.

The Second note was executed on December 3, 1990, in the principal amount of $12,309.36, payable in monthly installments of principal and interest equal to $266.10, beginning on January 2, 1991, and continuing monthly thereafter for sixty (60) months ("Note Two"). Note Two is secured by a 1991 Toyota Pickup Truck, VIN JT4RN93P2M5028686.

2. Treatment Under th e Plan. Based on the outstanding banance, the Debtor believes this obligation will be satisfied in the ordinary course. Therefore TMCC will be paid in accordance with the terms of its contract with the Debtor.

D. *Allowed Unsecured Claims (Class 4)*

1. *Description of Claims.* It is estimated that allowed unsescured claims will total approximately $307,000.00. See Exhibit "G". At present several disputed claims are anticipated, including but not limited to those of TMCC, GST, and TMS for costs and attorney's fees expended in the Litigation. At this time the total amount of disputed claims is not determinable, but if all are Allowed they may subsstantially affect the percentage of claim payments due to unsecured creditors under this Plan.

2. *Treatment Under the Plan.* Within thirty (30) days following the Consummation Date, each holder of an Allowed Unsecured Claim, shall receive 100% of its Allowed Unsecured Claim, as set forth in Exhibit "G;; attached hereto. Unclaimed or returned distributions shall be payable to the Returned Distribution Account. Unclaimed or returned distributions shall include, but not be limited to (i) funds returned by the holder of an Allowed Unsecured Claim as not due; (ii) funds returned as undeliverable after being forwarded to a holder of an Allowed Unsecured Claim's last known address; (iii) checks not presented to the Debtor's bank for payment within six (6) months of the date forwarded to the holder of an Allowed Unsecured Claim. Under this section the Claims of Class 4 are not impaired.

E. *Allowed Insider Claims (Class 5).*

1. *Description of Claims.* It is estimated that Allowed insider Claims will total approximately $667,000.00. See Exhibit "H."

2. *Treatment Under The Plan.* Within thirty (30) days following Consummation distributions to Classes 1,2,and 4 will occur. Assuming all Claimants in these classes have been paid in full any excess funds of the Debtor will be utilized to satisfy the costs and expenses incurred after Confirmation and associated with the Litigation. Once a Final Order or Settlement is entered on the Litigation any excess funds of Debtor may be paid to the holders of this Class until satisfied in full. It is not anticipated that the holders of this Class of Claims will receive any distribution from the Debtor unless the Litigation can be concluded successfully. this Class is impaired under the Plan.

E. *Equity Holders (Class 6).*

It is anticipated that the Equity Holders shall receive nothing under the Plan for or on account of their interest in stock, unless the Litigation is successful and all Claims in Classes 1-5 have been satisfied in full. Equity Holders shall retain the ownership of their common stock in Conte, as existed prior to the filing. Under this section the claims of Class 6 are impaired.

ARTTICLE XI

ALTERNATIVE TO CONFIRMATION OF THE PLAN

If Debtor's Plan is not timely confirmed, GST may

proceed to terminate its Dealer Agreement. Due to the nature and extent of Conte's assets a significant reduction in its value would result.

The following analysis is based on the assumption that an orderly liquidation is possible, but that the Dealer Agreement is terminated.

Liquidation Analysis.

If no plan can be confirmed, Debtor's Chapter 11 case may be converted to a case under Chapter 7 of the Bankruptcy Code. In Chapter 7 cases, a trustee would be elected or appointed to liquidate the assets of Debtor. The proceeds of the liquidation would be distributed to the respective holders of Claims against Debtor in accordance with the priorities established by the Bankruptcy Code.

To calculate what Unsecured Creditors would receive if the Debtor was liquidated, the Bankruptcy Court must first determine the aggregate dollar amount that would be generted from the Debtors assets if the Chapter 11 case was converted to a Chapter 7 case under the Bankruptcy Code and the assets were liquidated by a trustee in bankruptcy (the "Liquidation Value"). The Liquidation Value would consist of the net proceeds from the disposition of the assets of the Debtor against third parties.

The Liquidation Value available to general Creditors would be reduced by:

a. The value of the Dealer Agreement;

b. The difference between the Dealer Buy-back value (cost) of parts inventory and liquidation value; and

c. The costs and expenses of the liquidation under Chapter 7 which would include the Compensation of a trustee, as well as of counsel and of other professionals retained by the trustee; disposition expenses; all unpaid expenses incurred by the Debtor during its Chapter 11 reorganization proceeding (such as compensation for attorneys, financial advisors and accountants) which are allowed in the Chapter 7 proceeding (such as comensation for aattorneys, financial advisors and accountants) which are allowed in the Chapter 7 proceeding; litigation costs; and Claims arising from the operation of the Debtor during the pendency of the Chapter 11 reorganization and Chapter 7 liquidation proceedings. The liquidation itself may trigger certain priority Claims, such as Claims for severance pay and taxes, and may accelerate other priority payments which would otherwise be payable in the odinary course. These prior Claims would be paid in full out of the liquidation proceeds before the balance would be made available to pay general unsecured Claims or to make any distribution in respect of Equity Interests.

The Debtor believes that the liquidation would also generate a significant increase in general Unsecured Claims, such as contract and lease rejection Claims.

Once the percentage recoveries in liquidation of secured creditors, priority claimants, general creditors and equity security holders are ascertained, the value of the distribution available out of the Liquidation Value is compared with the value of the property offered to each of the clases of

Claims and interests under a plan to determine if it is in the best interests of each member of each impaired Creditor and equity security holder class.

Annexed to this Disclosure Statement as Exhibit "G" is the Liquidation Analysis of Conte's assets prepared by Conte.

Debtor believes that liquidation under Chapter 7 would result in substantial diminution of the value of its estate because of additional Administrative Expenses involved in the appointment of trustees and attorneys, accountants and other professionals to assist such trustees; additional expenses and Claims, some of which would be entitled to priority, that would arise by reason of the liquidation and from the rejection of leases and other executory contracts in connection with a cessation of Debtor's operations; and failure to realize the greater going concern value of Debtor's assets.

Respectfully submitted,
JOE CONTE TOYOTA, INC.

By: /s/ J.P.C.
Joseph P. Conte, Jr., President

EXHIBIT "H"

INSIDER CLAIMS (CLASS 5)

Debtor	*Amount*
Conte Investments	*$ 5,800.00*
The Conte Family Trust	*343,114.00*
Doris L.Conte	*198,214.00*
Joseph P. Conte, Jr.	*125,810.00*
TOTAL	*$672,938.00*